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MOUNT PISGAH MISSIONARY)
BAPTIST CHURCH,)

Complainant,)

vs.)

No. 03-0124

THE PEOPLES GAS LIGHT AND)
COKE COMPANY,)

Respondent.)

RESPONDENT'S REPLY TO BRIEF OF MOUNT PISGAH

THE PEOPLES GAS LIGHT AND COKE COMPANY, ("Peoples Gas"), by and through its attorneys, McGuireWoods LLP, files Respondent's Reply to Brief of Mount Pisgah at the request of the Hearing Examiner pursuant to 83 Ill. Adm. Code §§ 200,800, 840 and in support thereof states as follows:

INTRODUCTION

Mount Pisgah Missionary Baptist Church ("Complainant") filed a Formal Complaint ("Complaint") with the Illinois Commerce Commission (the "Commission") on February 27, 2003 disputing a bill in the amount of \$5,713.07, dated October 25, 2002 (the "October 25, 2002 bill"), for gas usage at 4622 South King Drive (the "Church"). An evidentiary hearing took place on January 13, 2005. At the close of evidence, the Administrative Law Judge ("ALJ") requested the parties to file closing briefs on January 27, 2004 and replies on February 3, 2004. Peoples Gas filed its Closing Brief on January 27, 2004. Peoples Gas received Complainant's Brief on February 1, 2005, to which it now responds.

ARGUMENT

A. Complainant has failed to prove that any gas leaks at the Church affected the October 25, 2002 bill.

Complainant alleges in its Brief that gas leaks at the Church affected the October 25, 2002 bill. (Complainant's Brief, p. 1) Complainant's allegations cannot stand, however, because Complainant failed to provide any evidence at the evidentiary hearing showing that any leaks at the Church affected the meter readings. Peoples Gas, however, has produced company records showing that the leaks were either before the time period in dispute and also before the meter, or were at the Church's appliance and therefore not Peoples Gas' responsibility. (Tr. 116-53) (Resp. Group Ex. 6)

In its Brief, Complainant states that "[a]t the hearing, Complainant's expert, Lawrence Holt, proved that gas leak affected the reliability of a meter reading." (Complainant's Brief, p. 1) Complainant's statement is conclusory and fails to cite to the record as required under Section 200.800 of the Illinois Administrative Code. 83 Ill. Admin. Code § 200.800 ("Statements of fact in briefs and reply briefs should be supported by citation to the record.") Regardless, the record shows that, in fact, Mr. Holt actually testified that a gas leak could affect the meter reading only "[i]f it's after the meter. If it's – if the gas is coming through the meter and then they have a leak, it's leaking out. It's still registering it and it's not being used." (Tr. 40)

Kevin Rice, a field service supervisor for Peoples Gas, testified that according to Peoples Gas' company records, the gas leaks that were discovered at the Church were all before the meter, and therefore would not affect the meter readings or the October 25, 2002 bill. (Tr. 123-48) (Resp. Group Ex. 6) Mr. Rice also testified that none of those leaks were between October 25, 2001 and October 25, 2002, the time period in question. (Tr. 123-27, 133-34) (Resp. Group Ex. 6) Moreover, Peoples Gas repaired every leak the same day it discovered the leak or the

very next day. (Tr. 123-24, 127, 135) (Resp. Group Ex. 6) Furthermore, Mr. Rice testified that Peoples Gas' records showed that the only leak that was discovered after the meter, during the time period in question, was discovered at the Complainant's boiler. (Tr. 128-29) (Resp. Group Ex. 6) Mr. Rice testified that a leak at a customer's appliance is not Peoples Gas' responsibility. (Tr. 128-29) Based on Peoples Gas' records and the testimony of Mr. Rice, Peoples Gas has shown that no gas leaks at the property affected the October 25, 2002 bill.

In addition, Complainant states in its Brief that "according to Respondent's expert theory, Peoples Gas could lose millions in gas leaks and not be aware." (Complainant's Brief, p. 2) Again, Complainant fails to cite to the record. Moreover, Complainant's comments are not relevant to the proceeding and the issue at hand. If Complainant were to consult the record, it would find that nowhere in the record does any witness state that Peoples Gas could lose millions in gas leaks. Moreover, Mr. Rice testified that lost gas is never billed to a customer because such leaks are before the meter. (Tr. 149-50, 152) Therefore, even if Peoples Gas were to lose money because of lost gas, it would not affect the October 25, 2002 bill in any way. Complainant has failed to produce any evidence showing that gas leaks or lost gas at the Church would affect the October 25, 2002 bill; therefore, the complaint should be denied.

B. Complainant has failed to show that Peoples Gas violated the Commission's Rules when it estimated Complainant's gas consumption from October 25, 2001 until October 2, 2002 and issued the October 25, 2002 revising prior billing based on underestimated gas usage.

Complainant also states in its Brief that it presented a copy of Respondent's "Meter Reading and Billings" statement which confirmed that a meter would be read at the customer's request. (Complaint's Brief, p. 2) However, Complainant fails to cite what exhibit he is referring to or where in the record this was discussed. Complainant also concludes that "Respondent also presented unreliable evidence at the hearing regarding several alleged attempts

to read said meter from time to time.” (Complainant’s Brief, p. 3) Complainant, however, fails to show how Respondent’s evidence is unreliable. In accordance with the Federal Rules of Evidence, Peoples Gas laid a proper foundation for its business records, through the testimony of Brian Schmoldt. (Tr. 190-91) Brian Schmoldt testified that the record was made by a person with knowledge of the acts appearing on it and at or near the time of the events on it and that those records were made in the course of regularly conducted business at Peoples Gas. (Tr. 190-91)

Respondent has shown through those business records that it made several attempts to read the meter from October 25, 2001 and October 25, 2002. (Tr. 190-93) (Resp. Group Ex. 8) Brian Schmoldt, a special services representative with Peoples Gas for six years, testified that according to Peoples Gas’ company records, attempts to read the meter were made on December 31, 2001, February 28, 2001 and April 29, 2002 and that each attempt was unsuccessful. (Tr. 190-93) (Resp. Group Ex. 8) The business records Mr. Schmoldt testified from are the above business records that were admitted into evidence by the Administrative Law Judge. (Tr. 217) Therefore, as allowed under the Federal Rules of Evidence, the person who made the attempts to read the meter was not required to be present at the hearing to testify. Fed.R.Evid. 803(6). Accordingly, Complainant’s comments are without merit.

Furthermore, Complainant makes conclusory allegations that Peoples Gas estimated Complainant’s bills “for approximately 2 years which was clearly a violation of Complainant’s policy and rules.” (Complainant’s Brief, p. 2) Complainant, however, fails to cite to any facts in the record showing that Peoples Gas violated any law or what Commission Rule Complainant alleges Peoples Gas violated.

Peoples Gas, however, has shown through its records and Mr. Schmoldt’s testimony, that

it made several attempts to read the meter, and even requested that Complainant read the meter itself and call it in to Peoples Gas. (Tr. 201-02) (Resp. Ex. 16) Mr. Schmoldt's testimony shows that Peoples Gas was unable to read the meter and therefore estimated gas usage from October 25, 2001 until October 2, 2002. (Tr. 187-89) The Illinois Administrative Code allows a utility to estimate a customer's bills when it has taken appropriate and reasonable measures to read the meter. 83 Ill. Admin. Code § 280.80(b)(1). As discussed *supra*, Peoples Gas made several attempts to read the meter and additionally requested that Complainant read the meter and phone it in to Peoples Gas. Furthermore, Peoples Gas' revision of Complainant's bill is proper under Section 280.100(a)(2) of the Illinois Administrative Code. 83 Ill. Admin. Code § 280.100(a)(2).

CONCLUSION

Peoples Gas presented its initial brief showing that Complainant failed to establish that Peoples Gas violated any provision of the Public Utilities Act or any of the Commission's rules. Peoples Gas has sufficiently established that it properly estimated Complainant's bill pursuant to 83 Ill. Admin. Code § 280.80(b)(1). In addition, Brian Schmoldt's testimony shows that Peoples Gas made substantial efforts to read the meter, however it was unable to do so because no one was present at the Church to allow the Peoples Gas employee access to the meter. Furthermore, Mr. Schmoldt testified that an actual read was taken on October 2, 2002. Based on that actual read, it was discovered that Peoples Gas had underestimated Complainant's gas usage and therefore it properly issued a timely make up bill pursuant to 83 Ill. Admin. Code § 280.100(a)(2). Moreover, Peoples Gas has shown, through Kevin Rice's testimony, that any leaks discovered at the Church did not affect the amount of gas Complainant was billed for because the gas leaks were either before the meter or were Complainant's responsibility to remedy. Finally, Peoples Gas has established through Mr. Taylor's testimony that the meter was

working well within the requirements required by 83 Ill. Admin. Code §§ 500.190 and 240.

Complainant, however, failed to meet its burden of proof. Its witnesses, Helen Walker and Reverend Joseph Jackson offered no factual support for their assertions that the October 25, 2002 bill was inaccurate. Their testimony showed that the only people with keys to the basement, where the meter was located, were the deacons and maintenance personnel, who were not even present at all times during the day. Furthermore, Complainant produced no records of any gas leaks at the Church that affected the meter reading in the October 25, 2002 bill.

WHEREFORE, Respondent, The Peoples Gas Light and Coke Company, respectfully requests that the Administrative Law Judge issue a Proposed Order denying Complainant, Mount Pisgah Missionary Baptist Church's Complaint.

Respectfully submitted,

THE PEOPLES GAS LIGHT AND COKE
COMPANY

By: 

One of its attorneys

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No. 03-0124

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NOTICE OF FILING

To:	Mr. Amos Smith	Admin. Law Judge Glennon Dolan
	Amos Smith Law Firm	Illinois Commerce Commission
	120 W. Madison St., Suite 1104	160 North LaSalle Street, Ste. C-800
	Chicago, IL 60602	Chicago, Illinois 60601-3104

PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62701, Respondent's Reply to Brief of Mount Pisgah.

DATED: February 3, 2005

THE PEOPLES GAS LIGHT
AND COKE COMPANY

By: _____

Jaime L. Hochhausen, one of its attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Respondent's Reply to Brief of Mount Pisgah on Complainant and the Administrative Law Judge by causing a copy to be placed in the U.S. mail, properly addressed and postage prepaid on February 3, 2005.

Respectfully Submitted,

Jaime L. Hochhausen

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